

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Developing a Unified Intercarrier)	CC Docket No. 01-92
Compensation Regime)	

REPLY COMMENTS OF VONAGE HOLDINGS CORP.

I. INTRODUCTION

Vonage Holdings Corp. (“Vonage”), on behalf of its network operating subsidiary, submits these reply comments in response to the Federal Communications Commission’s (“Commission”) Further Notice of Proposed Rulemaking.¹ Vonage urges the Commission to reform the currently broken intercarrier compensation system to eliminate the uncertainty and negative investment incentive that results from attempting to apply the current geographically-based system to IP-enabled services.

Vonage offers a Voice over Internet Protocol (“VoIP”) service that enables customers with broadband Internet connections and specialized Customer Premises Equipment to communicate without using a telephone line. Vonage’s service performs a net protocol conversion service that “bridges” the incompatible formats of the Internet and the Public Switched Telephone Network (“PSTN”).²

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92 (rel. Mar. 3, 2005) (“FNPRM”).

² A detailed description of Vonage’s service can be found in the Company’s Petition for a Declaratory Ruling. *See In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Petition for Declaratory Ruling, WC Docket No. 03-211 (filed Sept. 22, 2003).

Vonage is an end user of telecommunications services and purchases retail services to connect to the PSTN. Because Vonage is not a telecommunications carrier with interconnection rights, Vonage contracts with telecommunications carriers to transport communications to destinations on the PSTN. As a consumer of telecommunications services, Vonage recognizes that the current intercarrier compensation system is broken and in dire need of reform. Vonage believes that there is a need for a solution that does not discourage the continued deployment of broadband networks and applications and, therefore, does not recommend expanding the application of an asymmetrical or broken intercarrier compensation system to non-geographic IP-enabled services, such as VoIP. The importance of reforming the intercarrier compensation regime to recognize the non-geographic use of numbers is critical to ensuring the continued growth and success of innovative IP-enabled services like VoIP, as well as the continued growth of broadband Internet services throughout the United States.

II. THE COMMISSION SHOULD REFORM THE INTERCARRIER COMPENSATION SYSTEM

A. Initial Comments Are Nearly Unanimous In Concluding That The System Is Broken

Most parties commenting on the FNPRM agree that the existing intercarrier compensation regime is broken and needs to be reformed.³ Vonage agrees. The intercarrier compensation regime is irrational in part because traffic exchanged between the same two geographic end points is not subject to the same compensation obligations. Different compensation mechanisms apply depending on the type of carrier handling the traffic, the jurisdiction of the traffic and can vary further depending on the characterization of the traffic by

³ Some parties, including Qwest and SBC, argue that VoIP providers should pay access charges now until a bill-and-keep system is implemented. Vonage disagrees. Like other end-users of telecommunications services, Vonage does not pay access directly, however, the rates that the Company pays for telecommunications services include intercarrier compensation charges. Further, for the reasons discussed in these comments, a geographically-based access charge compensation system simply does not work with IP-enabled services.

the carriers.⁴ Despite the fact that the charges are assessed for what is, at base, the same functionality – originating, transporting, and terminating communications destined either to or from the network of another carrier – the existing intercarrier compensation system assesses charges in a non-uniform and inequitable manner.

B. *The Geographically-Based Existing Intercarrier Compensation System Does Not Work With IP-Enabled Services*

Because the nexus of geography and the communications service drives the existing access charge system, it does not work with IP networks that do not track the geographic endpoints of IP communications. Indeed, IP-enabled services do *not* allow carriers to make geographic assumptions based on telephone numbers,⁵ like the traditional circuit-switched telephone network. As the Commission explained in the *Vonage Order*, the physical location of users of Vonage’s service can continually change, as Vonage customers are able to place and receive calls from *any* location using a single telephone number.⁶ Therefore, Vonage’s service, as well as other IP-enabled services, allows for disassociating geographically-assigned telephone numbers from the fixed geographic point associated with the PSTN number assignment.⁷

Developing technologies and modifying networks to track location would divert capital to unproductive uses solely to support the badly-broken access charge regime. Moreover, forcing Vonage and other providers of IP-enabled services to change their services to track

⁴ See *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket 01-92, ¶ 5 (rel. April 27, 2001).

⁵ See *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) and Section 1.53 of the Commission’s Rules from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed Dec. 23 2003) (“Level 3 Petition”).

⁶ See *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, ¶ 9 (rel. Nov. 12, 2004) (“*Vonage Order*”).

⁷ See *Vonage Order* at ¶ 9.

geographic location “would greatly diminish the advantages of the Internet's ubiquitous and open nature that inspires the offering of IP-enabled services in the first instance.”⁸ Further, as the Commission found in the *Vonage Order*, the “significant costs and operational complexities associated with modifying or procuring systems to track, record and process geographic location information as a necessary aspect of the service, would substantially reduce the benefits of using the Internet to provide the service, and potentially inhibit its deployment and continued availability to consumers.”⁹ The Commission further recognized that it was impractical to separate out the interstate and intrastate components of Vonage’s service.¹⁰ While the Commission uses traditional end-to-end analysis to jurisdictionally separate circuit-switched traffic, such an approach fails when applied to Vonage’s service because Vonage has no “service-driven reason to know its users’ locations” and “to require Vonage to attempt to incorporate geographic ‘end-point’ identification capabilities into its service solely to facilitate the use of an end-to-end approach would serve no legitimate policy purpose.”¹¹

Since the Commission has concluded in the *Vonage Order* that Vonage’s service and other IP services having the same capabilities are interstate services and thus only subject to the Commission’s and not state public utility commission, jurisdiction, it is appropriate that only the Commission (and not State public utility commissions) consider how to apply the new intercarrier compensation regime to VoIP services. And, for the reasons discussed above, Vonage suggests that the Commission fix the current intercarrier compensation system and

⁸ *Vonage Order* at ¶ 29.

⁹ *Vonage Order* at ¶ 24.

¹⁰ *See Vonage Order* at ¶ 23.

¹¹ *Vonage Order* at ¶ 25.

ensure that any reform in the system does not apply geographic end-to-end analysis to IP-enabled services, like VoIP.

C. *Any Intercarrier Compensation Regime Should Be Based On Forward-Looking Pricing*

The revised intercarrier compensation regime must be based upon a forward-looking cost model and not embedded costs. When reviewing the Commission's first major rulemaking to implement to the 1996 Act, the 8th Circuit found:

[F]orward-looking costs have been recognized as promoting a competitive environment which is one of the stated purposes of the Act. The Seventh Circuit, for example, explained, "[I]t is current and anticipated cost, rather than historical cost that is relevant to business decisions to enter markets...historical costs associated with the plant already in place are essentially irrelevant to this decision since those costs are 'sunk' and unavoidable and are unaffected by the new production decision." *MCI Communications v. American Tel. & Tel. Co.*, 708 F.2d 1081, 1116-17 (7th Cir. 1983), cert. denied, 464 U.S. 891 (1983).¹²

There is no reason for the Commission to abandon its well-reasoned conclusions to use forward-looking costs. Accordingly, in developing a unified intercarrier compensation regime, Vonage encourages the FCC to continue to rely upon forward looking costs.¹³

D. *Uniform Reciprocal Charges Are Acceptable For Exchange of VoIP Traffic*

The Commission has the authority and is, in fact, required by existing law to implement an intercarrier compensation regime that is consistent with the cost-based reciprocal compensation requirements set forth in Section 252(d)(2) of the Act. Specifically, Section 252(d)(2) requires, in pertinent part, that reciprocal compensation rates are just and reasonable only if "(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities

¹² *Iowa Utils. Bd., v. FCC*, 219 F.3d 744 (8th Cir. 2000).

¹³ *See In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499, ¶¶ 618-711 (1996) ("First Report and Order") (providing FCC's detailed explanation as to why it chose a forward looking cost methodology because such methodology was consistent with the competitive goals of the 1996 Telecommunications Act).

of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”¹⁴

The implementation of uniform charges for the exchange of VoIP traffic can be established under this standard. Indeed, much of the necessary work to establish such intercarrier compensation already has been conducted.

III. APPLICATION OF LEGACY REGULATION TO VOIP PROVIDERS WOULD HARM CONSUMERS AND THE DEVELOPMENT OF ADVANCED IP SERVICES

Applying the current broken system of access charges to IP-enabled services without reform would impede innovation and slow the deployment of broadband networks to citizens of the United States. IP-enabled services, such as Vonage’s service offerings, provide consumers with powerful communications technology that delivers voice and data in an efficient manner. Vonage is continually improving its product and adding new features that will benefit consumers in the future.

Providers of IP-PSTN traffic also spur the adoption of broadband services, creating demand for broadband networks, and furthering the goals of Section 706 of the Telecommunications Act to achieve universal broadband for all Americans. President Bush has recognized the importance of broadband deployment by stating “[w]e ought to have universal, affordable access to broadband technology by the year 2007”¹⁵ The United States is lagging behind the rest of world in terms of broadband penetration rates. Recent reports place the broadband penetration rate in the United States at 11.4 subscribers per 100 people, ranking the

¹⁴ 47 U.S.C. § 252(d)(2).

¹⁵ Remarks of President Bush at the 24th Annual Homebuilders and Remodelers Showcase, Albuquerque, New Mexico, March 26, 2004.

United States 16th in the world.¹⁶ Further analysis illustrates the expansive gap between the United States and other developed countries like Korea, Hong Kong, the Netherlands and Canada, that have broadband penetration rates of 24.9, 20.9, 19.4, and 17.6 subscribers per 100 people, respectively.¹⁷

While the United States may be leading the world in the total number of broadband connections, the focus on broadband connections does not adequately address the shortcomings of the rate of broadband penetration in the United States as compared to other developed countries.¹⁸ As the most powerful and one of the most affluent countries in the world, the United States should have the highest number of broadband connections; however, this statistic fails to account for the fact that the United States has significantly more residents who can afford to pay for broadband service than other developed countries that are ranked far ahead of the United States in broadband penetration. Some would argue that the penetration differences between the United States and other countries are based upon the United States' vast geographic area and distant rural areas. However, Canada is larger than the United States and has many rural areas, but has a much higher penetration rate than the United States. Accordingly, despite leading the world in broadband subscribers, the United States lags far behind many other countries in broadband penetration.

In order to encourage broadband penetration and increase the take rate among consumers, it is vitally important that the Commission not apply the broken legacy access charge system to

¹⁶ See *Birth of Broadband*, Top Economies by Broadband Penetration, International Telecommunications Union Internet Reports, 2004. The term "broadband" is defined in the ITU Report as "transmission capacity with sufficient bandwidth to permit combined provision of voice, data and video with no lower limit. Effectively, broadband is implemented mainly through ADSL, cable modem or Wireless LAN . . . services." *Id.* at Glossary.

¹⁷ See *id.*

¹⁸ See "United States of Broadband," Wall Street Journal, July 7, 2005.

IP-PSTN communications. The Commission should fix the intercarrier compensation system immediately. Failure to fix the system will impede the development and deployment of broadband services and ultimately could place the United States at a significant competitive disadvantage as compared to other countries. Without a robust broadband network, the economic incentive to leverage existing resources and develop innovative technologies will be lost to those countries that are successful in deploying broadband networks at an affordable price to consumers. One significant hurdle standing in the way of widespread broadband adoption in the United States is the price for such services.¹⁹ By encouraging the development of broadband applications, the Commission can stimulate demand for broadband networks. There are many companies, including Vonage that want to expand and improve the range of the IP-enabled services available to consumers. The existing legacy access charge system and the regulatory uncertainty that surrounds the provision of IP-enabled services, however, chills investment in these broadband applications and networks and thus, ultimately harms consumers. The Commission must not compound the harm by applying the inherently flawed geographically-based access charge system to IP-enabled services; instead, the Commission should facilitate broadband penetration through reform of the legacy access charge system.

IV. CONCLUSION

Vonage submits that applying a legacy access charge system to packet-switched networks is impractical, inefficient and bad policy in part because such networks do not currently track the geographic point of origination or termination of communications. Further, the underlying

¹⁹ See John Barrett, *VoIP: At Last a Killer App?*, Parks and Associates § 3.0 (concluding that VoIP could be a “killer app” for broadband if the service and the underlying broadband service cost roughly \$60 a month) (rel. Jan. 2004). While Verizon and SBC currently are offering DSL services for approximately \$20/month, such promotions only are for a limited time and often require bundling with other services to be eligible for such discounts.

problem with the access charge system is the system itself. A broken system should not be applied to new IP-enabled services. The imposition of a failed legacy access charge system could result in stifling “killer applications” that are spurring demand for broadband services and fostering the deployment of broadband networks and broadband penetration throughout the United States.

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